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OGC Has Reviewed

OGC 67-0185

2 FEB 1967

MEMORANDUM FOR: Executive Director-Comptroller

SUBJECT: Special Military Detail Program for Duty  
in South Vietnam

1. This memorandum is for information. The purpose is to advise the current situation with respect to the essential legal problems involved in the military detail request.

2. The Deputy Legal Adviser for Administration, Department of State, has for consideration our request, together with a suggested draft, for a delegation of authority by the Secretary to this Agency, to permit this Agency to utilize the authority of Section 625(d)(1) of the Foreign Assistance Act of 1961 to pay military personnel at civilian, rather than military, rates. If the Deputy Legal Adviser believes the action is legally appropriate for the Secretary, he will request that a delegation be approved by or in the name of the Secretary.

3. Additionally, the Office of the Legal Adviser of AID is inquiring into the question as to whether, assuming a delegation from the Secretary is not issued, our problem could be handled by having the 50 military officers assigned to AID, and AID in turn loan them to this Agency for our Pacification activities and be paid at civilian rates.

4. Of the two possibilities, the delegation by the Secretary, I believe, would be the simplest and best for this Agency, because the DOD-to-AID-to-CIA approach necessarily would require considerable administrative arrangements by and through AID.

5. If neither of the foregoing possibilities is possible, the possibilities remaining then would include, I suppose, only the following:

a. An Executive Order under the Foreign Assistance Act delegating authority with respect to Section 625(d)(1) to this Agency. The availability of this approach assumes that the Deputy Legal Adviser of the Department of State concludes that the Secretary lacks authority to delegate to this Agency, but that the President does not.

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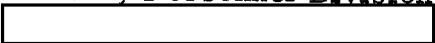
b. Legislation similar to Section 625(d)(1) perhaps could be sought, although the time factor and the publicity factor, I assume, would dictate against this approach.

c. We could pay the officers assigned by DOD only at the standard military rates. (A number of factors which would make this approach the preferable one anyway have been suggested. Essentially, they are the undesirability of having military people in Saigon actually in combat receiving less pay than do Pacification military people engaged in Pacification activities; and military people in Saigon with DOD receiving less pay than do military people in Saigon with CIA.)

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Associate General Counsel

cc: DC/FE  
O/Personnel  
Military Personnel Division  
  
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